

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MIGUEL MARQUEZ,)	No. C 06-0475 MMC (PR)
)	
Petitioner,)	ORDER TO SHOW CAUSE
)	
v.)	
)	
DAVID RUNNELS,)	
)	
Respondent.)	
_____)	

On January 25, 2006, petitioner, a California prisoner proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee.

BACKGROUND

In 2001, petitioner was sentenced to a term of 13 years and 4 months in state prison, following his guilty plea to various charges in the Superior Court of Santa Cruz County. He did not file any direct appeals. He did file a habeas petition in the California Supreme Court, and that petition was denied. .

DISCUSSION

A. Standard of Review

This Court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a);

1 Rose v. Hodges, 423 U.S. 19, 21 (1975). A district court shall "award the writ or issue an
2 order directing the respondent to show cause why the writ should not be granted, unless it
3 appears from the application that the applicant or person detained is not entitled thereto."
4 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the
5 petition are vague or conclusory, palpably incredible, or patently frivolous or false. See
6 Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (quoting Blackledge v. Allison,
7 431 U.S. 63, 75-76 (1977)).

8 B. Legal Claims

9 As set forth in the petition, petitioner's sole claim is that the trial court erred under
10 California law by using a prior juvenile conviction to enhance his sentence pursuant to
11 California Penal Code § 667. This claim is not cognizable because federal habeas relief is
12 unavailable for violations of state law or for alleged error in the interpretation or application
13 of state law. See Estelle v. McGuire, 502 U.S. 62, 67-68 (1991); 28 U.S.C. § 2254(a). As set
14 forth in a supporting memorandum of points and authorities attached to the petition, however,
15 petitioner additionally claims he received ineffective assistance of counsel, on the ground
16 counsel failed to object to the use of the juvenile prior as an enhancement. This latter claim,
17 when liberally construed, states a cognizable claim for the violation of petitioner's Sixth
18 Amendment right to the effective assistance of counsel.

19 **CONCLUSION**

20 In light of the foregoing, the Court orders as follows:

21 1. The Clerk of the Court shall serve by certified mail a copy of this order and the
22 petition, along with all attachments thereto, upon respondent and respondent's attorney, the
23 Attorney General for the State of California. The Clerk shall also serve a copy of this order
24 on petitioner.

25 2. Respondent shall file with the Court and serve on petitioner, within 60 days of
26 the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules
27 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
28 granted based on petitioner's cognizable claim that he received ineffective assistance of

1 counsel. Respondent shall file with the answer and serve on petitioner a copy of all portions
2 of the state trial record that have been transcribed previously and that are relevant to a
3 determination of the issues presented by the petition.

4 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with
5 the Court and serving it on respondent within 30 days of the date the answer is filed.

6 3. In lieu of an answer, respondent may file, within 60 days of the date this order
7 is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory Committee
8 Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a
9 motion, petitioner shall file with the Court and serve on respondent an opposition or
10 statement of non-opposition within 30 days of the filing of the motion, and respondent shall
11 file with the Court and serve on petitioner a reply within 15 days of the filing of any
12 opposition.


13 4. Petitioner is reminded that all communications with the Court must be served
14 on respondent by mailing a true copy of the document to respondent's counsel.

15 5. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
16 Court and respondent informed of any change of address and must comply with the Court's
17 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
18 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

19 6. Upon a showing of good cause, requests for a reasonable extension of time will
20 be granted as long as they are filed on or before the deadline which they seek to extend.

21 IT IS SO ORDERED.

22 DATED: May 15, 2006

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24 MAXINE M. CHESNEY
25 United States District Judge
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